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9 TI Beverage Group, Ltd

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12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14

15 TI BEVERAGE GROUP, LTD, et al

16 Plaintiffs,

17 vs.

18 S.C. CRAMELE RECAS, S.A.,  
19 PHILIP COX, et al,

20 Defendants.

) CASE NO. CV06-7793 VBF (JWJx)

) Related to: 2:13- CV-5685-JFW (Ex)

) **PLAINTIFF'S APPLICATION FOR**  
) **ORDER TO SHOW CAUSE RE**  
) **CONTEMPT AGAINST**  
) **DEFENDANTS PHILIP COX AND**  
) **S.C. CRAMELE RECAS, S.A. FOR**  
) **VIOLATION OF THIS COURT'S**  
) **ORDER; DECLARATION OF**  
) **MICHAEL MACHAT; EXHIBITS**

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23 TO THE ABOVE NAMED HONORABLE COURT AND TO THE  
24 DEFENDANTS PHILIP COX AND CRAMELE RECAS AND THEIR  
25 COUNSEL OF RECORD, AND TO ALL PARTIES IN INTEREST:  
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## I. BACKGROUND

Both this Court's Judgment and Order dated December 20, 2007 (docket Item 58) and the Revised Judgment and Order dated February 6, 2008 (docket numbers 67 and 66) expressly prohibit Defendants, and each of their agents and assigns from, *inter alia*,

*Using Vampire, Vampyre, Vampire Vineyards, Vamp, the Vamp icon, or any other word or words or marks which are confusingly similar to, or a colorable imitation of any of the aforementioned trade names and marks, either alone, as part of, or together with, any other word or words, trademark, service mark, tradename, or other business or commercial designation in connection with the sale, offering for sale, advertising, and/or promotion of beverage products and beverage accessories anywhere throughout the World.*

Also, the Revised Judgment and Order prohibits defendants from:

*Representing directly or indirectly by words or conduct that any beverage product or beverage accessory offered for sale, sold, promoted, or advertised by any of the RECAS parties, is authorized, sponsored by, endorsed by, or otherwise connected with any of the TI parties.*

The Order became effective upon signing. The Order also had a liquidated damages provision which states:

1        *The RECAS parties each agree that for any violation of its obligations*  
 2        *specified herein, the breaching party(ies) will be obligated to pay the*  
 3        *TI parties liquidated damages in the amount of ten thousand dollars*  
 4        *and no cents only (\$10,000.00) per incident plus one dollar and no*  
 5        *cents only (\$1.00) per bottle or dry good as the case may*  
 6        *be. The Parties expressly agree that said liquidated damages*  
 7        *constitutes a reasonable estimate of the harm such unauthorized*  
 8        *conduct is likely to cause the TI parties and should not be construed*  
 9        *as an unenforceable penalty.*

## 11        **II.    DEFENDANTS COX AND CRAMELE RECAS VIOLATED THE** 12        **COURT ORDER**

14        Last summer, Plaintiff TI Beverage Group was tipped off that a confusingly  
 15        similar knockoff brand to Plaintiff's Vampire and Dracula wine brands was being  
 16        sold in the marketplace under the name DRACULA'S BLOODLUST. Plaintiff  
 17        determined that the importer of the infringing brand and the principal owner were  
 18        Terra Firma USA and Cristian Soare, and filed suit in this Court. [Related Case  
 19        No. CASE NO. 2:13- CV-5685-JFW (Ex) *TI Beverage Group, Ltd. v. Terra Firma*  
 20        *USA, et al.*] Upon further investigation into the case against Terra Firma and  
 21        Cristian Soare, Plaintiff discovered that the suppliers of DRACULA'S  
 22        BLOODLUST were defendants Philip Cox and his winery Cramele Recas.

24        Michael Machat, President of Plaintiff TI Beverage Group, Ltd., wrote to  
 25        Philip Cox reminding him of the Court Order and asked for compensation pursuant  
 26        to that Court Order. Mr. Cox wrote back admitting that he and his winery did  
 27        indeed export the accused wine to Terra Firma USA, but denied any wrongdoing  
 28

1 claiming that Dracula has nothing to do with Vampires and that Dracula was a  
2 historic figure in Romania. (A copy of the email correspondence is attached to the  
3 Machat Declaration below.) Mr. Cox, an Englishman by nationality and  
4 education, and well read too, skipped over the fact that Dracula is perhaps the most  
5 famous fictional character of all time and certainly the most famous vampire. Mr.  
6 Cox also stated that he was not aware that Plaintiffs also had a trademark  
7 registration for Dracula and promised not to do it again.

8  
9 Machat wrote back demanding that Mr. Cox and Cramele Recas pay the  
10 liquidated damages that were agreed to and made part of this Court's order. Mr.  
11 Cox stated unequivocally that he would not. Plaintiff then amended the complaint  
12 in Related Case No. 2:13- CV-5685-JFW (Ex) and added Mr. Cox and Cramele  
13 Recas as parties. Mr. Machat then sent Mr. Cox a waiver of service form along  
14 with the summons and complaint and related documents. Mr. Cox refused to  
15 accept service on the new case.

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17 Mr. Machat then contacted the two counsel last listed as attorneys for  
18 defendants on this Court's docket – Daniel Bailey and Jonathan Cohen. Both of  
19 them stated they no longer represent Philip Cox and Cramele Recas. So a  
20 conference of counsel pursuant to Local Rule 7-3 was not possible prior to filing  
21 this motion.

### 22 23 **III. THIS COURT HAS JURISDICTION TO ENFORCE ITS ORDERS**

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25 The Settlement Agreement [Docket No. 66] provides that “this Court has  
26 and shall continue to have jurisdiction to enter judgment both against and for them  
27 in this case. Any objections any party may have regarding this Court's  
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jurisdiction to enter judgment against them, if any, are waived.” (Page 8 of 14 of Document 66 – which is also the last substantive page.)

Besides the language written above in which defendants Cox and Cramele Recas agree to jurisdiction, this Court has inherent jurisdiction to enforce its orders. *Michaelson v. United States ex rel. Chicago, St. Paul, Minneapolis & Omaha Ry Co.*, (1924) 266 U.S. 42, 65-66. The ability to penalize disobedience to judicial orders is “essential in ensuring that the Judiciary has a means to vindicate its own authority without complete dependence on other branches.” *Young v. United States ex rel. Vuitton et Fils S.A.* (1987) 481 U.S.787, 796, 107 S. Ct. 2124, 2131.

#### **IV. PLAINTIFFS HAVE ESTABLISHED A PRIMA FACIE VIOLATION OF THIS COURT’S REVISED JUDGMENT AND ORDER**

Defendants Philip Cox and Cramele Recas obviously had knowledge of this Court’s Revised Judgment and Order but apparently decided to risk it since they are thousands of miles away in Transylvania, the land of vampires where the historical Dracul inspired Bram Stoker to create the fictional Dracula character. Defendants have promised not to sell anymore wine with the word Dracula but have refused to pay the stipulated liquidated damages amount and have refused to answer the complaint in the related case.

#### **V. CONCLUSION**

Plaintiffs therefore respectfully requests that the Court issue an Order to Show Cause in re Contempt against Philip Cox and Cramele Recas as to why they

1 should not be ordered to pay Plaintiff TI Beverage Group, Ltd. the liquidated  
2 damages of \$23,200 it agreed to pay when stipulating to the Settlement Agreement  
3 and that a money Judgment be entered against them for the same amount.  
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6 Respectfully submitted,  
7 MACHAT & ASSOCIATES, P.C.  
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9 Dated: March 20, 2014 By: Michael Machat  
10 Michael Machat, Esq.  
11 Attorneys for  
12 Plaintiff TI BEVERAGE GROUP, LTD.  
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**DECLARATION OF MICHAEL MACHAT**

I, Michael Machat, hereby declare that:

1. I am the attorney for plaintiff TI Beverage Group, Ltd. I am licensed to practice before the Courts of the States of California and New York, and I am licensed to practice in the Central District of California, the Ninth Circuit Court of Appeals, and the United States Supreme Court. I make this declaration upon my own personal knowledge and if called as a witness I would testify as follows:

2. I have attached to this declaration a copy of the email exchanges between myself and Philip Cox referenced in the accompanying motion.

3. Plaintiff asks the Court to take judicial notice of trademark registrations for Dracula, Vampire, Vampire Vineyards, numbered 3319536, 2263907, and 3418138, respectively, and that the registrations all pre-exist the date of the violation of this Court's Order and the sale of the accused product by Cramele Recas to Terra Firma, USA.

4. As stated in the attached email exchange, I calculated the liquidated damages by adding \$10,000 to the number of bottles of infringing wine I believe was wrongfully sold by defendants. This number of bottles is based upon the admissions contained in Mr. Cox's emails and my prior years of doing business with him and his winery. Mr. Cox admitted to shipping one container of the infringing product to the United States. In its past dealings with Plaintiff TI Beverage Group, each container shipped to the US by defendants to TI Beverage Group, Ltd., contained 1100 cases of 12 bottles each or 13,200 bottles. So at \$1 a bottle,  $\$13,200 + \$10,000 = \$23,200$ .

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2 I declare under penalty of perjury under the laws of the United States that  
3 the foregoing is true and correct.  
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5 Executed this 20<sup>th</sup> day of March, 2014 in Beverly Hills, CA.  
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7 Michael Machat  
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## **EXHIBIT**

**From:** philip cox home@recaswine.ro   
**Subject:** Re: Notice of breach contract, contempt of court order and request to cease and desist from further infringing  
**Date:** November 22, 2013 at 9:41 AM  
**To:** MICHAEL MACHAT michael@machatlaw.com

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Michael

Just a few points to make things very clear.

1- The Draculas bloodlust brand , is nothing to do with our company. We have never claimed to own this brand, have never sold it in California or elsewhere in the USA or the rest of the world. All we did was produce one order under a manufacturing contract with Terra Firma company, - which very clearly states that it is their brand that we produced exclusively for them, and that we have no rights or obligations to.

2- We consider that most of what you are asking for in your previous message we have already complied with. We have not produced this product in over three and a half years, and have absolutely no intention to do so in the future. We have already informed you that we fully agree to never produce this product again.

3- We don't agree that we should pay you any money for any damages you claim may have been caused. At the time we produced this product for Terra Firma we were unaware that you had any trademarks with Dracula in the name, and we were fully assured by Mr Soare from Terra firma that he had researched the brand in question and that everything was registered and not in conflict with any other trademarks in the USA. In our contract with him it is very clearly stipulated that this is Terra Firmas brand and implicit that they are legally responsible for it. To be fair on Terra Firma - at the time we bottled the product in early July 2010 - you did not have registered the specific brand - Draculas Blood.

We certainly did not know at any point that there was a previous form of this brand, and that you had at any point been in contact with Mr Soare about this brand, we were never informed about any such events.

In my opinion, you should pursue this issue with Terra Firma's lawyers and come to an agreement with them. Our company has no interest at all in further dealings with this product and we have no interest in taking part in legal proceedings with you.

Kind Regards  
Philip

On Nov 19, 2013, at 10:04 PM, MICHAEL MACHAT wrote:

Dear Philip,

Please find attached the following:

A Notice of Lawsuit and a Request For Waiver of Service and Summons

Waiver of Service of Summons

Summons

First Amended Complaint for Trademark Infringement naming you and your company, and the two referenced exhibits. Please note electronic signatures are acceptable so if you choose to do so, you can simply return a signed copy of the Waiver form via email.

I've been told by Mr. Soare's Missouri attorney that you shipped one container to him. If that were the case, then under the liquidated damages provision we agreed to, you'd owe TI Beverage Group \$13,200 (\$1 per bottle) plus \$10,000 (per incident) for a total of \$23,200.

If you pay this amount, I will dismiss the lawsuit.

Best regards,

Michael Machat

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<CV-108.pdf>

<CV-39.pdf>

<summons.pdf>

<Doc 17-ExB--Consent Decree.pdf>

<Doc\_17\_Exhibit A.pdf>

<Doc\_017 First Amended Complaint.pdf>

On Sep 3, 2013, at 6:44 AM, philip cox wrote:

Hi Michael

Always nice to hear from you, glad you are still up to your old tricks.

First of all I would like to make very clear that this is not our brand,- we produced it under licence for Terra Firma inc, and the terms of our contract with them were very clear that it is their responsibility to register any brands they use, and respond for all aspects of any potential trademark issues in their country.

I can't say if this particular brand is an infringement of your brand, - to me it clearly does not have any link to Vampire neither verbally or design wise, but I learned a long time ago that US trademark legislation is very different from the rest of the world.

I can say 100 % that this does not infringe on the agreement we made with you last time, which you have copied to me in your message. The agreement we made was strictly for products that mention the word vampire. Dracula is not the same thing as Vampire it is a different word/concept and has various meanings in different parts of the world,- in Romania for example Vlad Dracul was a Romanian king that has nothing to do with vampires- I am sure you visited Bran castle and the historical sites linked to Dracula so you know that. The whole concept of vampires is a 100% American fictional invention thought up in the last century by bram stoker and has nothing to do with the Dracula and the historical facts.

So you can threaten and do what ever you want but there is absolutely no way that we are going to pay you any money over this issue. You have to sort it out with Mr Soare and Terra firma inc.

All I will say is that it is a complete waste of time for both you and everyone else,- this brand was a one off experiment 3 years ago which didn't work. it was only every produced for one delivery in a small quantity and has never subsequently been produced, nor is it planned to be produced in the future. It seems clear to me that this type of gimic products linked to Transilvania have had their moment and have absolutely no future , as I am sure you know.

So - you can be sure that this product will not appear again on the US market, and we are happy to agree to never produce it again in the future, as we are not producing it now or any time in the last 3 years.

Kind Regards

philip

On Aug 9, 2013, at 4:20 AM, Michael Machat wrote:

Dear Philip,

Not so long ago we were alerted to a company in Missouri that was infringing upon our Vampire Family of Marks, including not just Vampire, but specifically Dracula. So two days ago I sued this company. At the time I wrote the lawsuit I hadn't read the back label of the bottles. I since have, and I was surprised to see

time I wrote the lawsuit I hadn't read the back label of the bottles. I since have, and I was surprised to see that Cramele Recas is the producer of this infringing product. I know the US is a large country but didn't you think that this would eventually come to our attention? As you'll recall our settlement agreement from the last round of trademark infringement provides us with the option of accepting liquidated damages of \$10,000 per incident plus \$1 per bottle instead of proving up actual damages. The prior lawsuit concerned you selling a wine branded with a V (either with a drop of blood or without) and suggesting vampires. This time you've used the most famous vampire of all, Dracula.

So at this point I must demand once again that you cease and desist from exporting any more of this infringing product. If you continue to ship out more product, it will cost you more in the end. Additionally, please provide me with copies of all invoices for the Dracula's Bloodlust wines that you've issued.

If you'd like to settle this matter without paying lawyers' fees on top of what you owe, please let me know. From my perspective it seems like a no-brainer win for TI. Not only did you breach the contract, but you're also in contempt of court. My settlement demand is that you immediately stop attaching labels bearing references to vampires or using the words vampire or dracula etc to beverage products and that you pay us for what you've shipped to the US in 2010, 2011, 2012 and 2013. My guess is you probably owe TI Beverage Group at least \$50,000.

I've attached a copy of the recently filed complaint for your review. Also, I've attached a copy of the Final Order in TI's previous case against your company and you personally.

This email by no way is intended to waive or restrict any of my or TI's rights or remedies available to us, and all rights are reserved.

Best regards,  
Michael

<Complaint -- TI v Terra Firma.pdf>  
<FinalOrder in Cramele Recas Case.pdf>

-Sip the Blood of the Vine-

<image003.png>

[Vampire.com](http://www.vampire.com)

Become a fan of Vampire Vineyards on Facebook:

<http://www.facebook.com/VAMPIRECOM>

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